

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75-4149

UNITED STATES COURT OF APPEALS

Francis J. Costello,
Petitioner-Appellant

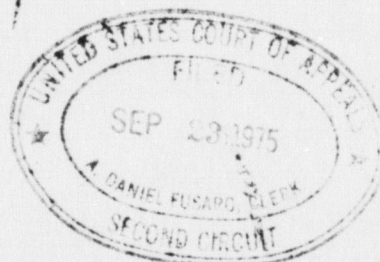
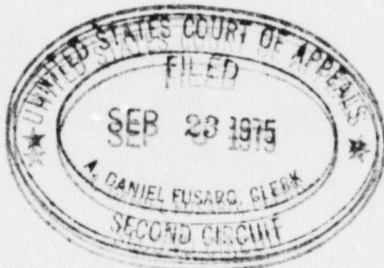
v.

Commissioner of Internal Revenue,
Respondent-Appellee

Tax Court Docket No. 592-73

Counsel Pro Se:

Francis J. Costello
53-54 96 Street
Elmhurst, New York 11368



UNITED STATES COURT OF APPEALS

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v.

Docket No. 592-73

position and relieve him of tax liability for the amount of tax in question. Petitioner believes such legal principles are primarily derived from the Free Exercise Clause of the First Amendment. Petitioner by reason of his religious beliefs is conscientiously opposed to participation in all war in any form, direct and indirect. Therefore, Petitioner believes he has the right to invoke the protection and jurisdiction of the Free Exercise Clause of the First Amendment. Petitioner will attempt to show the relevancy of such invocation by referring to selected decisions, opinions and interpretations of previous Supreme Court cases which attempted to ascertain the meaning of the Free Exercise Clause and to delineate the jurisdictional lines between the interests and actions of religion and those of the government.

WHEREFORE, the Petitioner requests the Court to review this case in light of the above issues, facts and opinions.

Francis J. Costello

(Petitioner-Appellant)

Francis J. Costello
53-54 96 Street
Elmhurst, New York 11368

OF COUNSEL:

(Petitioner-Appellant) Francis J. Costello
53-54 96 Street
Elmhurst, New York 11368

UNITED STATES TAX COURT

Francis J. Costello

Petitioner

v.

Docket No.

Commissioner of Internal Revenue

Respondent

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (RSC-531 STOP 102B) dated November 14, 1972, and as the basis for his case alleges as follows:

1. The petitioner is an individual with residence at 94-31 51 Avenue, Elmhurst, New York 11373. The return for the period here involved was filed with the Director for the Internal Revenue Service Center district of North-Atlantic Region.
2. The notice of deficiency was mailed to the petitioner on November 14, 1972.
3. The deficiency as determined by the Commissioner is in income taxes for the calender year 1971 in the amount of \$1,438.00 dollars of which approximately \$659.00 dollars is in dispute.

Exhibit 2CT

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

a. The Commissioner erred in disallowing dependency deductions for the calendar year 1971.

b. The Commissioner erred in determining dependency deductions for calendar year 1971 as an expression of war or other protest.

c. The Commissioner erred in determining that dependency deductions for calendar year 1971 should be adjusted in accordance with Section 61 of the Internal Revenue Code.

5. The facts upon which the petitioner relies as the basis of this case are as follows:

a. Petitioner, by reason of religious training and belief, has acted conscientiously within the jurisdiction and protection of the Free Exercise Clause of the First Amendment.

b. Petitioner, under the forum of faith and conscience, has consistently now and in the past, maintained his responsibility to obey a moral power higher than the State with respect to his conscientious objection to participation, direct and indirect, in all war and war-related activities.

c. Petitioner has acted not only within the protection of the First Amendment with respect to religious freedom but also within the Constitutional interpretations, decisions and opinions of the Supreme Court concerning freedom of religion (e.g. U.S. v. Seeger, 1965); within the constitutional and statutory recognition by Congress as to religious belief; and within the right to conscience as defined by the Catholic Church (e.g. Pastoral Constitution on the Church in the Modern World, 1965).

Exhibit 2A (cont.)

Wherefore, the petitioner prays that this Court may try the case and find the petitioner not guilty of the deficiency as set forth by the Commissioner of Internal Revenue dated November 14, 1972.

Francis J. Costello
(Petitioner)

94-31 51 Ave Elmhurst, N.Y. 11373
(Post-office address)

STATE OF New York
COUNTY OF Queens

ss:

Francis J. Costello, being duly sworn says that he is the petitioner above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and those he believes to be true.

Francis J. Costello

Subscribed and sworn to me before this 28th day of

December, 1972.

Edward H. Hunsicker
(Official title)

Exhibit 2 (Cont.)

**Internal Revenue
Service Center
North-Atlantic Region**

Date: NOV 14 1972

In reply refer to: RSC-531 STOP 1025



CERTIFIED MAIL

Francis J. Costello
94-31 Fifty-First Avenue
Manhasset, New York 11073

Tax Year Ended: December 31, 1971

Deficiency \$1,433.00

This letter is to notify you--as required by law--that we have determined the income tax deficiency shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiency was computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed Short-Form Statutory Notice Statement. This will permit an early assessment of the deficiency and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the statement, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiency. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiency and bill you until after the Tax Court has decided your case. The time in which you may file a petition with the Court (90 or 150 days, as the case may be) is fixed by law, and the Court cannot consider your case if your petition is filed late.

Under section 7463 of the Internal Revenue Code, the United States Tax Court has a simplified procedure for handling cases where the disputed portion of the deficiency does not exceed \$1,000. You may obtain information on this special procedure, as well as a copy of the rules for filing a petition with the Tax Court, by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

Sincerely yours,
Johnnie M. Walters
Commissioner

By

F. L. Brown

Director

Enclosures:
Statement
Envelope

6

EXHIBIT A

Form RSC-531 (12-71)

FORM 2947
(REV. MAY 1970)

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

DATE OF STATUTORY
NOTICE

SHORT-FORM STATUTORY NOTICE STATEMENT

NOV 14 1972

NAMES AND ADDRESS OF TAXPAYERS

KIND OF TAX

INCOME

Francis J. Costello
84-31 Fifty-Ninth Avenue
Manhattan, New York 10073

TAX YEAR ENDED	DEFICIENCIES	ADDITIONS TO THE TAX		
1971	\$1,130.60			

The above deficiencies are based on adjustments and explanations as shown in the attached report of examination.

CONSENT TO ASSESSMENT AND COLLECTION

I do not wish to contest the above determination in the United States Tax Court; therefore I consent to the immediate assessment and collection of the deficiencies and additions to the tax, if any, indicated above, together with interest due.

NOTE: If a joint return was filed, both taxpayers must sign.	SIGNATURE OF TAXPAYER	DATE
	SIGNATURE OF TAXPAYER	DATE

IF YOU AGREE, PLEASE SIGN ONE COPY AND RETURN IT; KEEP THE OTHER COPY FOR YOUR RECORDS

U. S. GOVERNMENT PRINTING OFFICE: 1970-10-10

FORM 2947 (REV. 5-72)

Report of Individual
Income Tax Audit ChangesDepartment of the Treasury
Internal Revenue Service

Name and Address on Latest Return (or present name and address if different)

Social Security No.

Year

Form

1040

Examining District

Name and Title of Person With Whom Audit Changes Were Discussed

Date of Report

8/14/72

Filing Status

Single

In Reply Refer To:

AU:CA STOP 102B

Income and Deduction Amounts Adjusted

Explanation No. (See attached)	Item Changed	Amount shown on return or as previously adjusted	Corrected amount of Income and Deduction	IRS Ref. No.	Adjustment Increase or (Decrease)
250	Exemptions	6750. -	675. -		6075. -

A. Adjustment in income—Increase or (Decrease)—(See explanation of adjustments attached)

6075. -

B. Total income or taxable income shown on return or as previously adjusted

4299. -

C. Corrected total income or taxable income

10,374. -

D. Tax computed with exemptions

2191. -

E. Tax Surcharge

-

F. Tax Credits (Retirement income, investment, foreign, or other allowable credits)
(If adjusted, see explanation attached)

-

G. Self, employment tax, Tax from recomputing prior year investment credit
(If adjusted, see explanation attached)

-

H. Corrected Tax (Line D plus line E plus line G less line F)

2191. -

I. Tax shown on return or as previously adjusted

753. -

J. Additional tax before credits, if any (Line H less line I)

1438. -

K. Overpayment before credits, if any (Line I less line H)

-

L. Net prepayment credit, excess FICA, Non-highway Gasoline Tax Credit, Regulated Investment Company
Undistributed Capital Gain Credit, previous assessments, refunds, and credits (If adjusted, see schedule attached)

1545. -

M. Additional Tax (Line H less line L)

646. -

N. Overpayment (Line I less line H)

Interest

13. -

O. Penalties, if any (See explanation attached)

TOTAL Balance Due

659. -

Consent to Assessment and Collection—I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the Tax Court of the United States the findings in this report; therefore, I give my consent to either:

- (1) the immediate assessment and collection of the additional tax shown on line M, plus any interest due on this tax, and also any penalties shown on line O, or
 (2) the overpayment shown on line N, plus any interest and adjusted by any penalties shown on line O.

NOTE: if a joint return
was filed, both taxpayers
should sign.

Signature of Taxpayer

Date

Signature of Taxpayer

Date

If you agree, please sign one copy and return it in the enclosed
return envelope. Keep the other copy with your records.

UNITED STATES TAX COURT

FRANCIS J. COSTELLO,

FILED)

1973 Petitioner,)

26

v.)

UNITED STATES
TAX COURT)

Docket No. 592-73

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case admits, denies and alleges as follows:

1. Admits the allegations of paragraph 1 of the petition; except denies that a copy of the notice of deficiency is attached to the petition; alleges that a copy of the notice of deficiency is attached hereto and marked as Exhibit A.

2. Admits the allegations of paragraph 2 of the petition.

3. a. Denies the allegations of paragraph 3 of the petition; alleges that the deficiency determined by the respondent for the year 1971 is in the total amount of \$1,438.00, all of which is not in controversy.

SERVED MAR 27 1973

b. Alleges that the deficiency in income tax for the taxable year 1971, as determined in the statutory notice of deficiency, is based upon the following adjustment:

Unallowable Personal Exemptions for Claimed Dependents - \$6,075.00

The petitioner on his income tax return for the taxable year 1971 claimed exemptions for the support of ten dependents. He has not established that nine of the claimed exemptions are allowable under the Int. Rev. Code of 1954, §§ 151 and 152.

4. a. to c., inclusive. Denies that the respondent erred as alleged in subparagraphs a. to c., inclusive, of paragraph 4 of the petition.

5. a. to c., inclusive. Denies the allegations of subparagraphs a. to c., inclusive, of paragraph 5 of the petition.

6. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiency determined by the respondent be in all respects approved.

(Sgd) LEE H. HENKEL, JR. - JSH

LEE H. HENKEL, JR.,
Chief Counsel,
Internal Revenue Service.

OF COUNSEL:

MARVIN E. HAGEN,
Regional Counsel,
H. STEPHEN KESSELMAN,
Attorney,
Internal Revenue Service,
26 Federal Plaza (12th Floor),
New York, New York 10007.

UNITED STATES TAX COURT

FRANCIS J. COSTELLO,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 592-73

STIPULATION OF FACTS

It is hereby stipulated that for the purpose of this case the following statements are accepted as facts, subject to the right of either party to object to the admission in evidence of such facts on the grounds of materiality and relevancy, and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part hereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. The petitioner, Francis J. Costello (hereinafter referred to as petitioner), resided at 94-31 51 Avenue, Elmhurst, New York 11373 at the time the petition was filed in this case.

2. For the taxable year 1971, petitioner timely filed his federal income tax return with the Internal Revenue Service Center at Andover, Massachusetts. A copy of that return is attached hereto and marked as Exhibit 1-A.

3. During the taxable year 1971, petitioner was a single individual whose only dependent as defined by the Int. Rev. Code of 1954, §§ 151 and 152, was himself.

FRANCIS J. COSTELLO
53-54 96 Street
Elmhurst, N. Y. 11368
Tel. No. 212-699-7728

MEADE WHITAKER,
Chief Counsel,
Internal Revenue Service.

By: _____
THEODORE E. DAVIS,
Assistant Regional Counsel,
26 Federal Plaza (12th Floor),
New York, New York 10007,
Tel. No. 212-264-0413.

CATHOLIC CHARITIES
DIOCESE OF BROOKLYN
191 JORALEMON STREET
BROOKLYN NY 11201

11-1633548N

WAGE AND TAX STATEMENT 1971

Copy B — To Be Filed With Employee's
Federal Tax Return

353

Type or print EMPLOYER'S Federal identification number, name, and address above.

Employer's State Identification Number

FEDERAL INCOME TAX INFORMATION			SOCIAL SECURITY INFORMATION		STATE OR MUNICIPAL INFORMATION	
Federal income tax withheld	Wages paid subject to withholding in 1971 ¹	Other compensation paid in 1971 ²	F.I.C.A. employee tax withheld ³	Total F.I.C.A. wages paid in 1971 ⁴	State income tax withheld	City tax withheld
1545.30	12457.02		405.60		312.40	100.28

Type or print EMPLOYEE'S social security no., name, and address (including ZIP) below.		No. of Dependents	1 Single 2 Married	Name of State	State Form No.
073-34-0584				NEW YORK	IT-2102
COSTELLO FRANK		10	1	Name of City	City Form No.
37 41 79 ST					
JACKSON HTS NY 11372		KQ		Gross wages for State if different from Federal.	Employee number
				ENTER STATE PAYMENTS TO NON-RESIDENTS	21438

UNCOLLECTED EMPLOYEE TAX ON TIPS

¹ Includes tips reported by employee. Amount is before payroll deductions or sick pay exclusion.

² Add this item to wages in reporting wages and salaries on your income tax return.

³ The social security (FICA) rate of 5.2% includes .6% for Hospital Insurance Benefits and 4.6% for old-age, survivors, and disability insurance.

⁴ Includes tips reported by employee.

FORM W-2 — Department of the Treasury, Internal Revenue Service APP. I.R.S. 3/31/71 22-1766474

Form 1040

US Department of the Treasury / Internal Revenue Service
Individual Income Tax Return

1121112754585-

1971

For the year January 1-December 31, 1971, or other taxable year beginning 1971, ending 19

Please print or type	First name and initial (If joint return, use first names and middle initials of both)	Last name	Your social security number
	Present home address (Number and street, including apartment number, or rural route)	Spouse's social security number	
	City, town or post office, State and ZIP code	Occupation	Yours
	Spouse's		

Filing Status—check only one:

- 1 ☒ Single
2 ☐ Married filing jointly (even if only one had income)
3 ☐ Married filing separately and spouse is also filing.
Give spouse's social security number in space above and enter first name here
4 ☐ Unmarried Head of Household
5 ☐ Surviving widow(er) with dependent child
6 ☐ Married filing separately and spouse is not filing

Exemptions

- 7 Yourself ☐ Regular / 65 or over / Blind ☐ Enter number of boxes checked
8 Spouse (applies only if item 2 or 6 is checked) ☐ ☐ ☐
9 First names of your dependent children who lived with you

10 Number of other dependents (from line 33)

11 Total exemptions claimed

12 Wages, salaries, tips, etc. (Attach Forms W-2 to back. If unavailable, attach explanation)

13a Dividends (see pages 6 and 11 of instr.) \$ 13b Less exclusion \$ Balance

(If gross dividends and other distributions are over \$100, list in Part I of Schedule B.)

14 Interest. [If \$100 or less, enter total without listing in Schedule B] [If over \$100, enter total and list in Part II of Schedule B]

15 Income other than wages, dividends, and interest (from line 40)

16 Total (add lines 12, 13c, 14 and 15)

17 Adjustments to income (such as "sick pay," moving expense, etc. from line 45)

18 Adjusted gross income (subtract line 17 from line 16)

- See page 3 of instructions for rules under which the IRS will figure your tax.
If you do not itemize deductions and line 18 is under \$10,000, find tax in Tables and enter on line 19.
If you itemize deductions or line 18 is \$10,000 or more, go to line 46 to figure tax.

19 Tax (Check if from: ☐ Tax Tables 1-13, ☐ Tax Rate Sch. X, Y, or Z, ☐ Sch. D, ☐ Sch. G or ☐ Form 4726)

20 Total credits (from line 54)

21 Income tax (subtract line 20 from line 19)

22 Other taxes (from line 60)

23 Total (add lines 21 and 22)

24 Total Federal income tax withheld (attach Forms W-2 or W-2P to back)

25 1971 Estimated tax payments (include 1970 overpayment allowed as a credit)

26 Other payments (from line 64)

27 Total (add lines 24, 25, and 26)

28 If line 23 is larger than line 27, enter BALANCE DUE Pay in full with return. Make check or money order payable to Internal Revenue Service

29 If line 27 is larger than line 23, enter OVERPAYMENT

30 Line 29 to be: (a) REFUNDED Allow at least six weeks for your refund check

(b) Credited on 1972 estimated tax

31 Did you, at any time during the taxable year, have any interest in or signature or other authority over a bank, securities, or other financial account in a foreign country (except in a U.S. military banking facility operated by a U.S. financial institution)?
If "Yes," attach Form 4683. (For definitions, see Form 4683.)

Sign here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Your signature

Date

Signature of preparer other than taxpayer, based on all information of which he has any knowledge.

Date

Spouse's signature (if filing jointly, BOTH must sign even if only one had income)

Address

PART I.—Additional Exemptions (Complete only for other dependents claimed on line 10)

32 (a) NAME	(b) Relationship	(c) Months lived in your home. If born or died during year, write B or D.	(d) Did dependent have income of \$675 or more?	(e) Amount YOU furnished for dependent's support. If 100% write ALL.	(f) Amount furnished by OTHERS including dependent.
				\$	\$

33 Total number of dependents listed above. Enter here and on line 10

PART II.—Income other than Wages, Dividends, and Interest

34 Business income or (loss) (attach Schedule C)	34		
35 Net gain or (loss) from sale or exchange of capital assets (attach Schedule D)	35		
36 Net gain or (loss) from Supplemental Schedule of Gains and Losses (attach Form 4797)	36		
37 Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (attach Schedule E).	37		
38 Farm income or (loss) (attach Schedule F)	38		
39 Miscellaneous Income			
(a) Fully taxable pensions and annuities <small>not reported on Schedule E—see instructions on page 7</small>			
(b) 50% of capital gain distributions (not reported on Schedule D)			
(c) State income tax refunds (caution—see instructions on page 7)			
(d) Alimony			
(e) Other (state nature and source)			
(f) Total miscellaneous income (add lines 39(a), (b), (c), (d) and (e))	39		
40 Total (add lines 34, 35, 36, 37, 38, and 39). Enter here and on line 15	40		

PART III.—Adjustments to Income

41 "Sick pay" if included in line 12 (attach Form 2440 or other required statement)	41		
42 Moving expense (attach Form 3903)	42		
43 Employee business expense (attach Form 2106 or other statement)	43		
44 Payments as a self-employed person to a retirement plan, etc. (attach Form 2950SE)	44		
45 Total adjustments (add lines 41, 42, 43, and 44). Enter here and on line 17	45		

PART IV.—Tax Computation (Do not use this part if you use Tax Tables 1-13 to find your tax.)

46 Adjusted gross income (from line 18)	46	12547	00
47 (a) If you itemize deductions, enter total from Schedule A, line 32 and attach Schedule A (b) If you do not itemize deductions, and line 46 is: (1) \$10,000 or more but less than \$11,538.43, enter 13% of line 46 (2) \$11,538.43 or more, enter \$1,500. Note: deduction under (1) or (2) is limited to \$750 if married and filing separately.	47	1500	00
48 Subtract line 47 from line 46	48	11047	00
49 Multiply total number of exemptions claimed on line 11, by \$675	49	6750	00
50 Taxable income. Subtract line 49 from line 48	50	10372	00

(Figure your tax on the amount on line 50 by using Tax Rate Schedule X, Y or Z, or if applicable, the alternative tax from Schedule D, income averaging from Schedule G, or maximum tax from Form 4726.) Enter tax on line 19.

PART V.—Credits

51 Retirement income credit (attach Schedule R)	51		
52 Investment credit (attach Form 3468)	52		
53 Foreign tax credit (attach Form 1116)	53		
54 Total credits (add lines 51, 52, and 53). Enter here and on line 20	54		

PART VI.—Other Taxes

55 Self-employment tax (attach Schedule SE)	55		
56 Tax from recomputing prior-year investment credit (attach Form 4255)	56		
57 Minimum tax (see instructions on page 8). Check here <input type="checkbox"/> , if Form 4625 is attached	57		
58 Social security tax on unreported tip income (attach Form 4137)	58		
59 Uncollected employee social security tax on tips (from Forms W-2)	59		
60 Total (add lines 55, 56, 57, 58, and 59). Enter here and on line 22	60		

PART VII.—Other Payments

61 Excess FICA tax withheld (two or more employers—see instructions on page 8)	61		
62 Credit for Federal tax on special fuels, nonhighway gasoline and lubricating oil (attach Form 4136)	62		
63 Regulated Investment Company Credit (attach Form 2439)	63		
64 Total (add lines 61, 62, and 63). Enter here and on line 26	64		

COPY

April 15, 1972

To whom it may concern,

Enclosed please find my Federal tax return requesting a refund of \$792.30. As related to you in two previous correspondences, dated Aug. 30, 1971 and again on March 6, 1972, I have on the basis of my Christian conscience, found it necessary to withhold Federal war taxes through W-4 exemptions.

As a professional person involved in human services, I try consistently to live the Gospel of Christ. To do this today, one often finds that to live in jeopardy is the only way to give witness to non-violent love and peace and to achieve radical social and political change. Such Christian witness often compels one to become a sign of contradiction to the prevailing social order which daily initiates, contributes and accepts the violence and oppression carried out by government policy and program.

Such violence and oppression are clearly evidenced by the immorality of the present war with its inhumane atrocities against all the people of Southeast Asia. Since violence can only breed violence, this war in its perpetuation has resulted in international genocide and an oppressive abuse and neglect of the poor in this country. This country's violent posture in its pursuit of war and war-related purposes has resulted in an immoral and unjust violation of mankind's basic human rights.

For these reasons, I withhold Federal war taxes and demand the refund to the amount found on my Federal tax return. All war taxes withheld and refunded will be utilized for life-producing purposes. The monies will be deposited into the Human Service Alternative Fund Program, which I have set up in the community where I work. The purpose of this fund is to provide food, clothing and other basic necessities to our poor families and to develop other self-help community programs. Into this fund will also be deposited other withheld war taxes, federal phone excise taxes etc. contributed by individuals across the country.

Please be assured that I am fully aware of the consequences of my actions. However, I am living according to my conscience and the mandate of the social gospel of Christ. In faith and conscience, I will continue to do all that is within my power in conjunction with others of good will and always within a non-violent radical posture, to stop the government from violating the human rights of

Exhibit 8

COPY

Page 2.

all my brothers and sisters.

Sincerely yours in the peace of Christ

Francis J. Costello

Exhibit 8 (cont.)

UNITED STATES TAX COURT

FRANCIS J. COSTELLO,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 592-73

TRIAL MEMORANDUM

Petitioner, Francis J. Costello, presently residing at 53-54 96 Street, Elmhurst, New York 11368 requests the Court to redetermine the tax deficiency for the calendar year 1971 as set forth in the notice of deficiency, dated November 14, 1972. The deficiency as determined by the Commissioner is in income taxes in the amount of \$1,438.00 dollars of which approximately \$659.00 is in dispute.

1. A request to the Court for a redetermination of the alleged tax deficiency for the calendar year 1971 is made as the Petitioner maintains that the determination of the tax set forth in the notice of deficiency is based upon the following errors:

a. The Commissioner erred in disallowing dependency deductions for the calendar year 1971.

b. The Commissioner erred in determining dependency deductions for calendar year 1971 as an expression of war or other protest.

c. The Commissioner erred in determining that dependency deductions for calendar year 1971 should be adjusted in accordance with Section 61 of the Internal Revenue Code.

2. In view of the above and relying upon the ensuing points and facts, Petitioner maintains that the Commissioner erred in determining this tax deficiency in that he failed to give proper legal effect to the facts set forth in Paragraph 5 of Petitioner's original Petition.

3. With regard to the tax in question, the nature of the Petitioner's testimony is based upon the following:

a. Under the Free Exercise Clause of the First Amendment of the United States Constitution, each American citizen is guaranteed the right of free exercise of religion. In view of the Petitioner's religious training and beliefs which require him to refuse to participate, directly and indirectly, in all war and war-related activities, it is the Petitioner's position that no tax liability may be constitutionally imposed upon him.

b. With respect to the tax amount in dispute, inasmuch as it is contended that no tax liability existed during the tax year in question, it would follow that there was no obligation to file a tax return for the amount in question. It is submitted that failure to file was due to reasonable cause and was neither willful nor clandestine; and failure to pay was not due to negligence or malicious disrespect for rules and regulations but was rather based upon a reasonable and conscientious belief that no tax deficiency was owing to the Internal Revenue Service.

4. Petitioner submits, in synopsis, the following applicable legal and moral principles in support of the above testimonial facts and contentions:

I. Constitutional Rights of Petitioner

a. Petitioner, by reason of his religious training and belief is conscientiously opposed to participation in all war in any form, direct and indirect. Therefore, as guaranteed by the First Amendment of the United States Constitution, the Petitioner has the right to invoke the protection and the jurisdiction of the Free Exercise Clause of the First Amendment

which reads:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

b. In view of the fact that the word 'religion' is not defined by the Constitution, the Petitioner goes to the history of the times and borrows some decisions, opinions and interpretations of previous Supreme Court and lower Court cases to ascertain the meaning of the Free Exercise Clause and to delineate the jurisdictional lines between the interests and actions of religion and those of government.

c. In U.S. v. Macintosh, 283 U.S. 605, (1931), Chief Justice Hughes, in a dissenting opinion, agreed upon by the other dissenters, defined religion as including a belief in the duty to obey God rather than man. In his dissenting opinion, he stated:

"The essence of religion is a belief in a relation to God involving duties superior to those arising from any human relation..... One cannot speak of religious liberty with proper appreciation of its essential and historic significance, without assuming the existence of a belief in supreme allegiance to the will of God."

d. In U.S. v. Seeger, 380 U.S. 163, (1965), the unanimous opinion of the Court in favor, again ascertained the meaning of the Free Exercise Clause. Within the context of the First Amendment, the Court decided the case on the construction of the language of the Universal Military Training and Service Act together with opinions and statements of Chief Justices Hughes and Stone. In defining a man's right to conscientious opposition to participation

in war in any form by reason of religious training and belief, the Court adopted the language of the Universal Military Training and Service Act of 1948 which defines religious training and belief in the following terms:

"Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological or philosophical views or merely a personal moral code."

The Court understood the meaning of the phrase 'a conviction based upon religious training and belief' as meaning:

"All sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent. The test might be stated in these words: A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption, comes within the statutory definition."

Justice Clark, in his opinion for the Court, recalled that the rationale for recognition of conscientious objection to war in any form was greatly ascertained by the dissenting opinion of Chief Justice Hughes in the U.S. v. Macintosh case in his statement:

"In the forum of conscience, duty to a moral power higher than the State has always been maintained."

e. It might argued by the Respondent or others that there is an overriding public interest which forbids accomodation with respect to conscientious objection to participation in war in any form, direct, and indirect, due to religious training and belief. However, in U.S. v. Jonison, 376 U.S. 14 (1963) the Court relying upon Sherbert v. Verner vacated a ruling of the Minnesota Supreme Court, which held that jury duty, a

primary duty of all citizens, was superior to a religious belief which forbade judging others and therefore, forbade jury duty. After U.S. v. Jenison, it is possible to argue that it is unnecessary to balance the public interest against the individual's interest to determine whether an exception to the general law should be made to accomodate the free exercise of religion and conscience.

f. On December 31, 1973, in a landmark decision, U.S. District Court Judge Clarence C. Newcomer of Philadelphia ruled that the First Amendment prohibits the government from compelling an employer to withhold income taxes of an employee who is opposed to the payment of war taxes for religious reasons. The ruling by Judge Newcomer on behalf of a suit filed in 1970 by the American Friends Service Committee and two of its employees, stated that:

"Such withholding violates the free exercise of their religion as members of the Society of Friends. There is no doubt in our minds that the claimed protected activity of bearing witness by refusing to pay the war taxes involved herein on the part of the plaintiffs..... is religiously motivated we find that the claimed protected activity is religiously motivated within the meaning of the First Amendment."

With regard to the Plaintiff's withholding 51.6% of their taxes devoted to war, Judge Newcomer said this about the percentage figure:

"The figure represents a reasonable, rational and fair percentage amount which can be used to determine the proportion of the individual plaintiff's taxes which are spent for purposes to which they conscientiously object."

g. In conjunction with this, Representative Ronald

Dellums with eleven other Congressmen, introduced to Congress on April 16, 1973, the World Peace Tax Fund Act, H.R. 7053.

This fund proposes that the Internal Revenue Code of 1954 be amended to provide an alternative to contribution to military spending for Federal taxpayers who are conscientiously opposed to participation in war and that the Fund be established to receive and distribute to qualified peace related activities the portion of such individual's tax payments that would otherwise go to military spending.

Sections of this Act read as follows:

"Extend to taxpayers who are conscientiously opposed to war, rights comparable to those traditionally given to draftees who are conscientious objectors.... Allocate to a World Peace Tax Fund the portion of their Federal taxes which would otherwise be used for military expenditures.... (Taxpayers) who are committed to a strict application of the Commandment: "Thou shalt not kill"... are deeply distressed because at present they must either violate what they consider to be a law of God or break the Federal laws which require them to pay taxes which will be spent on lethal weapons.... a growing number of these conscientious objectors are reporting that they have come to a point where they have no choice, in their conscience, but to break the Nation's laws and withhold part or all of their Federal tax payments. They do this openly and are prepared to take the consequences.... it involves those very individuals whose qualities of citizenship and concern for the welfare of their fellowmen and of all mankind who know them and by those who hear of their plight."

II. Petitioner's Right of Conscience

B. The scope of individual moral responsibility has been delineated in the Nuremberg Principles, a formulation of international law promulgated by the United Nations in 1950 and approved by the United States. The three principles relevant to individual moral responsibility are as follows:

"II. The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law."

"IV. The fact that a person acted pursuant to order of his government or of a superior does not relieve him from responsibility under international law provided a moral choice was in fact possible to him."

"VII. Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law."

i. The Universal Declaration of Rights, adopted by the United Nations General Assembly in 1948, gives recognition to conscience and religion. Article I provides that:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Article 18 provides that:

"Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

j. The religious community of man has amply demonstrated in word and deed, its support of the right of the individual conscience and the practice of non-violence in spirit and action. On December 7, 1965, the Vatican Council II stated in its Pastoral Constitution of the Church In the Modern World (Article 78) that:

"Motivated by the same spirit, we cannot fail to praise those who renounce the use of violence in the vindication of their rights....."

In conjunction with this, the world community of Churches has given its full support to the right of individual conscience.

On April 11, 1963, Pope John XXIII wrote in his Encyclical, Pacem In Terris that:

"Since the right to command is required by the moral order and has as its source in God, it follows that, if civil authorities legislate for or allow anything that is contrary to the will of God, neither the law made or the authorization granted can be binding on the consciences of the citizens since God has more right to be obeyed than men."

In support of this, various documents of Vatican II state that conscience is the core of man and the mediation through which the individual can come to an interpretation of the Divine Law and the fulfillment of the human dignity of himself and others. In Article 3 of the Vatican II document on the Declaration On Religious Freedom, it is stated that:

"On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. In all his activity, a man is bound to follow his conscience faithfully, in order that he may come to God, for whom he was created. It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in religious matters."

This idea is carried further in Articles 16 and 17 of the Vatican II document on the Pastoral Constitution of the Church In the Modern World. Article 16 states that:

"In the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil, the voice of conscience can when necessary, speak to his heart more specifically: do this, shun that. For man has in his heart a law written by God. To obey it is the very dignity of man; according to it he will be judged."

And in Article 17 it is stated that:

"Hence man's dignity demands that he act according to a knowing and free choice. Such a choice is personally motivated and prompted from within. It does not result from blind internal impulse nor from mere external pressure Man achieves such dignity when he pursues his goal in a spontaneous choice of what is good and procures for himself through effective and skillful action, apt means to that end."

Again September, 1974, the Second World Conference of Religion for Peace met in Louvain, Belgium issued a Declaration which included the following:

"We therefore dedicate ourselves to work together for the total abolition of war..... We plead with all people of faith and good will to recognize that there is no future for humanity if world-wide nuclear war is simply postponed or temporarily avoided. We urge that the religions of the world mount every possible pressure on the nuclear weapon governments to halt the proliferation of destructive nuclear armaments and to roll back existing weaponry until the stockpiles of nuclear devices have been safely dismantled and destroyed.

III. Religious Beliefs of Petitioner

h. By reason of religious training and belief, the Petitioner is conscientiously opposed to participation in war in any form, direct and indirect and has demonstrated a consistency in such beliefs as supported by the following facts:

1) In 1967, the Selective Service System granted the Petitioner a 1-0 classification.

2) In May, 1970, Petitioner, in view of the immoral activity of the United States in Southeast Asia, returned his 1-0 classification as an act of conscience and faith and in demonstration of Petitioner's refusal to comply with or recognize the legitimacy of the Selective Service System in their immoral war effort.

3) Since September, 1969, Petitioner's moral and religious beliefs caused him to exercise a moral choice by refusing to pay the Federal Telephone excise tax and a percentage of his Federal income taxes which

go to war and war-related activities. In each situation, Petitioner filed with the Internal Revenue Service, a series of letters of intent and statements explaining his moral choice and position.

4) Since September, 1969, the Petitioner has withheld approximately 61% of all his Federal income taxes which go to war and war-related activities and has contributed these withheld war taxes into the Human Services Alternative Fund Program, which was personally set up by the Petitioner. This fund is an ongoing program whose purpose is to develop and sustain various self-help life-producing programs in communities where the Petitioner may be working and secondly to support organizations dedicated to the spirit and practice of non-violence in their pursuit of truth, justice and peace for the community of man.

WHEREFORE, the Petitioner requests the Court to make a redetermination of the tax deficiency in light of the above testimony and facts.

Francis J. Costello
(Petitioner)

Francis J. Costello
53-54 96 Street
Elmhurst, N.Y. 11368

OF COUNSEL:

(Petitioner) Francis J. Costello
53-54 96 Street
Elmhurst, N.Y. 11368

PERSONAL MONEY ORDER

PERSONAL MONEY ORDER

NOT VALID OVER \$250.00

No. A 270003

December 1, 19 71 50-1108
214

4

PAY TO THE ORDER OF Institutional Services Inc.



Frank J. Costello CSW
 Frank J. Costello
 Catholic Charities Bureau of Edlyn
 336 Beach 35 Street
 Edgemere, New York 11691

Invoice No. 1176 ARVERNE, N.Y.
 For- 19 Apollo #1526 Blankets Your Or.No. HB3692

COPY NOT NEGOTIABLE
 ADDRESS

CUSTOMER COPY

DATE	SHIPPED BY	OUR ORDER NO.	ALWAYS REFER TO INVOICE NO.	
11/18/71	United Linen	HB 3692	11763	
QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL	
19	Apollo #1526 Blankets, 66x90", Blue	5.35	101.65	
	Prepaid Freight Charge		8.90	
			110.55	

rd. 12/1/71
M.O. #A 27003

V

INSTITUTIONAL SERVICES, INC.
 653 HICKS ST., BROOKLYN, N. Y. 11231

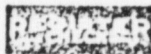
Date Paid 12/1/71 A.O. Check No. A 270003

THIS IS YOUR INVOICE

Exhibit 15

R

PERSONAL MONEY ORDER



PERSONAL MONEY ORDER

R

NOT VALID OVER \$250.00

No. A 270002

December 1, 1971

50-1108
214

4

PAY TO THE ORDER OF The Flagstaff Foods Corp.



ARVERNE, N.Y.

For Emergency Food-Bill of 11/26/71-Inv. #32248

Frank J. Costello csw
 Frank J. Costello
 Catholic Charities of Brook
 330 Beach Street
 Edgemere, New York 11691

COPY NOT NEGOTIABLE

THE FLAGSTAFF FOODS CORP.

CUSTOMER COPY

PERTH AMBOY, NEW JERSEY

DATE

TELEPHONE
HILLCREST 2-7000

CATHOLIC CHARITIES 41585
 FAMILY SERV DIV 03
 OF QUEENS
 316 BEACH 37TH ST 41585
 EDGEMERE LI NY

11/26/71

32248

MO.	DAY	YR.	DESCRIPTION	CHARGES	CREDITS
11	12	71		3270	
11	12	71		2540	
11	19	71		3825	
			9635	9635 *	

STATEMENT

Peninsula No. On-A A 270002
 Pd. 12/1/71

Exhibit 15 (cont.)

UNITED STATES TAX COURT

WASHINGTON

FRANCIS J. COSTELLO,

Petitioner,)

v.

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

Docket No. 592-73.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, filed March 12, 1975, it is

ORDERED and DECIDED: That there is a deficiency in income tax for the taxable year 1971 in the amount of \$1,438.00.

(Signed) THEODORE TANNENWALD, JR.

Judge

ENTERED MAR 12 1975
Enter:

T. C. Memo. 1975-55

UNITED STATES TAX COURT

FRANCIS J. COSTELLO, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 592-73.

Filed March 12, 1975.

Francis J. Costello, pro se.

H. Stephen Kesselman, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

TANNENWALD, Judge: Respondent determined a deficiency of \$1,438.00 in petitioner's income taxes for 1971.

Technically, the underpayment was arrived at by disallowance of nine of the ten dependency exemptions claimed by petitioner, to which he concedes he was not entitled. The real issue, however, is whether legal principles supervening the Internal Revenue Code permit the petitioner to refuse to pay that portion of his income taxes which he considers would be expended for war-related activities.

Some of the facts are stipulated and are so found. The stipulation of facts and attached exhibits are incorporated herein by this reference.

Petitioner resided in Elmhurst, New York, at the time the petition was filed. His Federal income tax return for 1971 was filed with the Internal Revenue Service Center, Andover, Massachusetts.

During the taxable year 1971, petitioner was a single individual with no dependents. He is a religious person and is engaged in a career of social service. He believes that any direct or indirect participation in war or

war-related activities would violate the principles of his religion, and that supporting such activities through payment of taxes is one form of indirect participation. He also believes that the United States engaged in war crimes during the Vietnamese War, and that any participation on his part through payment of taxes would have constituted complicity culpable under international law. He claimed additional dependency exemptions sufficient to reduce his income tax liability by that amount which he concluded would be expended on war-related activities. In this proceeding, he denies liability for the deficiency on the grounds that nonpayment was justified by the free exercise clause of the First Amendment, and by international law.

The contentions advanced by petitioner are not unfamiliar to this Court. Their purely legal aspects have been considered and rejected. Susan Jo Russell, 60 T.C. 942 (1973); Abraham J. Muste, 35 T.C. 913 (1961).¹ Nothing has happened since our decisions in those cases to cause us to depart from their holdings. Petitioner calls our attention to the World Peace Tax Fund Act, H.R. 7053, 93d Cong., 1st Sess., which as unenacted legislation can have no

¹ See also Mary E. Austin, T.C. Memo. 1975-51; David L. Kent, T.C. Memo. 1974-304.

positive influence on our conclusion. The most significant recent development is the Supreme Court decision in United States v. American Friends Service Committee, ___ U.S. ___ (1974). In that case, the relief unsuccessfully sought by the taxpayer was what petitioner has already at least partially accomplished by other means -- to be allowed initially to decline to pay religiously objectionable taxes. Even the district court decision therein, 368 F. Supp. 1176 (E.D. Pa. 1973), prior to its reversal, provided no support to petitioner, because it did not purport to determine the plaintiff's ultimate tax liabilities.

To the extent that petitioner presents other than a legal argument, it is not cognizable in this forum. Neither the First Amendment nor the other legal principles relied upon by petitioner nor the evident sincerity of his beliefs furnishes any basis for granting him relief from his obligation to comply with the income tax law.

Decision will be entered
for the respondent.

UNITED STATES TAX COURT
Washington, D.C.

Francis J. Costello
Petitioner,

v.

Docket No. 592-73

Commissioner of Internal Revenue,
Respondent.

NOTICE OF APPEAL

Notice is hereby given that Francis J. Costello hereby
appeals to the United States Court of Appeals for the
Second Circuit from the decision of this court entered in
the above captioned proceedings on the 12 day of March
1975.

Francis J. Costello
Petitioner

Francis J. Costello
53-54 96 St.
Elmhurst, N.Y. 11368

OF COUNSEL:

(Petitioner) Francis J. Costello
53-54 96 St.
Elmhurst, N.Y. 11368

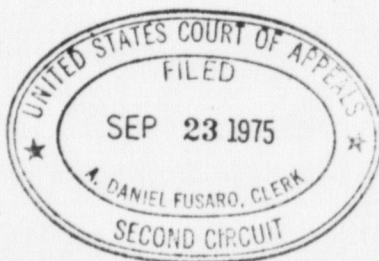
Dated: June 2 1975

75-4149

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B
P/S



CITATIONSBrief pgs.

- Brandt, Irving, James Madison: Father of the Constitution
(New York: 1950) Vol. 3, p. 269. (p. 4)
- Jefferson, Thomas, Letter to Edward Dowse (1803). (p. 4)
- Jefferson, Thomas, The Papers of Thomas Jefferson,
edited by Julian P. Boyd. Vol. 2.
Princeton: 1950, p. 546 ff. (p. 4)
- John XXIII, Pope, Encyclical Letter, Pacem In Terris
(Rome: 1963). (p. 10)
- Stone, Harlan F., "The Conscientious Objector", 21
Columbia University, L.Q. 253 (1919). (p. 5,6)
- United Nations, General Assembly. Universal Declaration
of Human Rights passim, Articles 1 and
18, 1948. (p. 9)
- United Nations, International Law Commission.
The Nuremberg Principles, I, IV, VII,
passim, 1950. (p. 8,9)
- United States Congress. Universal Military Training
and Service Act of 1948. 50 U.S. Code,
Appendix 456 (j), 1964. (p. 5)
- United States Congress, House, World Peace Tax Fund
Act, H.R. 7053; April 16, 1973. (p. 7,8)
- United States Constitution, Amendment I, Free Exercise
Clause. (p. 3)
- United States District Court v. American Friends
Service Committee, (Dec. 31, 1973). (p. 6,7)
- United States v. Jenison, 375 U.S. 14 (1963). (p. 6)

	<u>Brief</u> <u>pgs.</u>
<u>United States v. Macintosh</u> , 283 U.S. 605 (1931).	(p. 3,5)
<u>United States v. Seeger</u> , 380 U.S. 163 (1965).	(p. 4,5)
Vatican Council II, <u>Declaration on Religious Freedom</u> , passim Article 3, (1965).	(p. 10)
Vatican Council II, <u>Pastoral Constitution of the Church in the Modern World</u> , passim Articles 16,17,78, (1965).	(p. 10,11)
World Conference on Religion and Peace. Statement from Proceedings. Kyoto, Japan, October 1970.	(p. 11)
World Conference on Religion and Peace. Statement from Proceedings. Louvain, Belgium, September, 1974.	(p. 11,12)
World Council of Churches. Statement from Proceedings of Fourth Assembly. Uppsala, Sweden, 1968.	(. 11)

UNITED STATES TAX COURT

FRANCIS J. COSTELLO,
Petitioner,

V.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 592-73

BRIEF

1. Petitioner, Francis J. Costello, presently residing at 53-54 96 Street, Elmhurst, New York 11368 seeks from the Court a redetermination of the tax deficiency for the calendar year 1971 as set forth in the notice of deficiency, dated November 14, 1972. The deficiency as determined by the Commissioner is in income taxes in the amount of \$1,438.00 dollars of which approximately \$659.00 is in dispute. A copy of the notice of deficiency is attached hereto and marked as Exhibit 1.

2. Petitioner maintains that the determination of the tax set forth in the notice of deficiency is based upon the following errors:

a. The Commissioner erred in disallowing dependency deductions other than the Petitioner himself for the calendar year 1971.

b. The Commissioner erred in determining dependency deductions for the calendar year 1971 as an expression of a war protest deduction.

c. The Commissioner erred in determining that dependency deductions for calendar year 1971 should be adjusted in accordance with Section 61 of the Internal Revenue Code.

In view of the above, Petitioner maintains that the Commissioner erred in determining this tax deficiency in that he failed to give proper legal effect to the facts and contentions set forth in Paragraph 5 of Petitioner's original Petition. A copy of the original Petition is attached hereto and marked as Exhibit 2.

3. With regard to the tax in question, the nature of the position upon which the Petitioner relies is based upon the following points and facts:

a. Under the Free Exercise Clause of the First Amendment of the United States Constitution, each American citizen is guaranteed the right of free exercise of religion. In view of the Petitioner's religious training and beliefs which require him to refuse to participate, directly and indirectly, in all war and war-related activities, it is the Petitioner's position that no tax liability may be constitutionally imposed upon him.

b. With respect to the tax amount in dispute, inasmuch as it is contended that no tax liability existed during the tax year in question, it would follow that there was no obligation to file a tax return for the amount in question. It is submitted that failure to file was due to reasonable cause and was neither willful nor clandestine; and failure to pay was not due to negligence or malicious disrespect for rules and regulations but was rather based upon a reasonable and conscientious belief that no tax deficiency was owing or could be owed to the Internal Revenue Service.

4. Petitioner submits the following applicable legal and moral principles and points of law, together with facts regarding Petitioner's religious beliefs and actions, in support of the above facts and contentions:

I. Constitutional Rights of Petitioner

a. Petitioner, by reason of his religious training and belief is conscientiously opposed to participation in all war in any form, direct and indirect. Therefore, as guaranteed by the First Amendment of the United States Constitution, the Petitioner has the right to invoke the protection and the jurisdiction of the Free Exercise Clause of the First Amendment which reads:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

b. In view of the fact that the word 'religion' is not defined by the Constitution, the Petitioner goes to the history of the times and borrows some opinions, interpretations, and testimony of the Founding Fathers and of previous Supreme Court cases to ascertain the meaning and the intent of the Free Exercise Clause and to delineate the jurisdictional lines between the interests and actions of religion and those of the government.

c. In U.S. v. Macintosh, 283 U.S. 605, (1931), Chief Justice Hughes, in a dissenting opinion, agreed upon by the other dissenters, defined religion as including a belief in the duty to obey God rather than man. In his dissenting opinion, he stated:

"The essence of religion is a belief in a relation to God involving duties superior to those arising from any human relation..... One cannot speak of religious liberty, with proper appreciation of its essential and historic significance, without assuming the existence of a belief in supreme allegiance to the will of God."

d. The free exercise of religion and conscience was also the intention of James Madison and Thomas Jefferson when they attempted to formulate the intention and consequent jurisdiction of the First Amendment. According to Madison,

"The civil rights of none shall be abridged on account of religious belief or worship nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, abridged."

According to Jefferson,

"Religion is a matter which lies solely between man and his God; that he owes account to none other (than himself) for his faith or his worship"

Again, according to Jefferson in a letter to Edward Dowse (1803), he writes,

"We are bound, you and I and everyone, to make common sense to maintain the common right of freedom of conscience."

e. In U.S. v. Seeger, 380 U.S. 163 (1965), the unanimous opinion of the Court in favor, again ascertained the meaning of the Free Exercise Clause. Within the context of the First Amendment, the Court decided the case on the construction of the language of the Universal Military Training and Service Act together with the opinions and statements of Chief Justices Hughes and Stone. In defining a man's right to conscientious opposition to participation in war in any form by reason of religious training and belief, the Court adopted the language of the Universal Military Training and Service Act of 1948 which defines religious training and belief in the following terms:

"Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological or philosophical views or merely a personal moral code."

With respect to a conscientious conviction against participation in war in any form and a conviction based upon religious training and belief, the Court understood the meaning of the phrase 'a conviction based upon religious training and belief' as encompassing:

"All sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent. The test might be stated in these words: A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption, comes within the statutory definition."

Justice Clark, in his opinion for the Court, recalled that the rationale for recognition of conscientious objection to war in any form was greatly ascertained by the dissenting opinion of Chief Justice Hughes in the U.S. v. Macintosh case in his statement:

"In the forum of conscience, duty to a moral power higher than the State has always been maintained."

f. Chief Justice Stone also wrote in "The Conscientious Objector", 21 Columbia Univ. L.Q. 253 (1919) the following statement which was quoted by the U.S. Supreme Court in March, 1965:

"Both morals and sound policy require that the State should not violate the conscience of the individual. All our history gives confirmation to the view that the liberty of conscience has a moral and social value which makes it worthy of preservation at the hands of the State. So deep in its significance and vital, indeed, is it to the integrity of man's moral and spiritual nature that

nothing short of the self-preservation of the State should warrant its violation; and it may well be questioned whether the State which preserves its life by a settled policy of violation of the conscience of the individual will not in fact ultimately lose it by the process."

g. It might be argued by the Respondent or others that there is an overriding public interest which forbids accomodation with respect to conscientious objection to participation in war in any form, direct and indirect, due to religious training and belief. However, in U.S. v. Jenison, 375 U.S. 14 (1963), the Court relying upon Sherbert v. Verner vacated a ruling of the Minnesota Supreme Court, which held that jury duty, a primary duty of all citizens, was superior to a religious belief which forbade judging others and therefore, forbade jury duty. After U.S. v. Jenison, it is possible to argue that it is unnecessary to balance the public interest against the individual's interest to determine whether an exception to the general law should be made to accomodate the free exercise of religion and conscience.

h. While the Courts and Congress have attempted to examine the right of individual conscience as interpreted by the world human and religious communities of man, it has recently, through precedent court decisions and proposed legislation, ruled and introduced its own interpretation as to the individual's conscientious right and responsibility towards non-cooperation with and non-payment of war taxes.

i. On December 31, 1973, in a landmark decision since overturned but being appealed, U.S. District Court

Judge Clarence C. Newcomer of Philadelphia ruled that the First Amendment prohibited the government from compelling an employer to withhold income taxes of an employee who is opposed to the payment of war taxes for religious reasons. The ruling by Judge Newcomer on behalf of a suit filed in 1970 by the American Friends Service Committee and two of its employees, Lorraine Cleveland and Leonard Cadwallader, stated that:

"Such withholding violates the free exercise of their religion as members of the Society of Friends. There is no doubt in our minds that the claimed protected activity of bearing witness by refusing to pay the war taxes involved herein on the part of the plaintiffs is religiously motivated we find that the claimed protected activity is religiously motivated within the meaning of the First Amendment."

With regard to the Plaintiff's withholding 51.6% of their taxes devoted to war, Judge Newcomer said this about the percentage figures:

"The figure represents a reasonable, rational and fair percentage amount which can be used to determine the proportion of the individual plaintiff's taxes which are spent for purposes to which they conscientiously object."

j. In conjunction with this, Representative Ronald Dellums with eleven other Congressmen, introduced to Congress on April 16, 1973, the World Peace Tax Fund Act, H.R. 7053. This fund proposes that the Internal Revenue Code of 1954 be amended to provide an alternative to contribution to military spending for Federal taxpayers who are conscientiously opposed to participation in war and that the Fund be established to receive and distribute to qualified peace related activities the portion of such individual's tax

payments that would otherwise go to military spending.

Sections of this Act read as follows:

"Extend to taxpayers who are conscientiously opposed to war, rights comparable to those traditionally given to draftees who are conscientious objectors.... Allocate to a World Peace Tax Fund the portion of their Federal taxes which would otherwise be used for military expenditures.... (Taxpayers) who are committed to a strict application of the commandment: "Thou shalt not kill".... are deeply distressed because at present they must either violate what they consider to be a law of God or break the Federal laws which require them to pay taxes which will be spent on lethal weapons a growing number of these conscientious objectors are reporting that they have come to a point where they have no choice, in their conscience, but to break the Nation's laws and withhold part or all of their Federal tax payments. They do this openly and are prepared to take the consequences....it involves those very individuals whose qualities of citizenship and concern for the welfare of their fellowmen and of all mankind are recognized by those who know them and by those who hear of their plight."

II. Petitioner's Right and Responsibility of Individual Conscience

k. In ascertaining the meaning and appropriate thinking with respect to the concept of religious belief and conscience, the Court and Congress have examined the ever-broadening understanding of the modern and religious community of man.

1. The scope of individual moral responsibility has been delineated in the Nuremberg Principles, a formulation of international law promulgated by the United Nations in 1950 and approved by the United States. The three principles relevant to individual moral responsibility are as follows:

"II. The fact that internal law does not impose a penalty for an act which constitutes a crime under

international law does not relieve the person who committed the act from responsibility under international law."

"IV. The fact that a person acted pursuant to order of his government or of a superior does not relieve him from responsibility under international law provided a moral choice was in fact possible to him."

"VII. Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law."

m. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, gives recognition to conscience and religion. Article 1 provides that:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Article 18 provides that:

"Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

n. The religious community of man has amply demonstrated in word and in deed, its support of the right of individual conscience and the practice of non-violence in spirit and action. On December 7, 1965, the Vatican Council II stated in the Pastoral Constitution of the Church In The Modern World (Article 78) that:

"Motivated by the same spirit, we cannot fail to praise those who renounce the use of violence in the vindication of their rights...."

In conjunction with this, the world community of Churches has given its full support to the right of individual conscience.

On April 11, 1963, Pope John XXIII wrote in his Encyclical, Pacem In Terris that:

"Since the right to command is required by the moral order and has as its source in God, it follows that, if civil authorities legislate for or allow anything that is contrary to the will of God, neither the law made nor the authorization granted can be binding on the consciences of the citizens since God has more right to be obeyed than men."

In support of this, various documents of Vatican II state that conscience is the core of man and the mediation through which the individual can come to an interpretation of the Divine Law and the fulfillment of the human dignity of himself and others. In Article 3 of the Vatican II document on the Declaration On Religious Freedom, it is stated that:

"On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of conscience. In all his activity, a man is bound to follow his conscience faithfully, in order that he may come to God, for whom he was created. It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in religious matters."

This idea is carried further in Articles 16 and 17 of the Vatican II document on the Pastoral Constitution of the Church in the Modern World. Article 16 states that:

"In the depths of his conscience, man detects a law which he does not impose upon himself, but which holds him to obedience. Always summoning him to love good and avoid evil, the voice of conscience can when necessary speak to his heart more specifically: do this, shun that. For man has in his heart a law written by God. To obey it is the very dignity of man; according to it he will be judged."

And in Article 17, it is stated that:

"Hence man's dignity demands that he act according to a knowing and free choice. Such a choice is personally motivated and prompted from within. It does not result from blind internal impulse nor from mere external pressure.... Man achieves such dignity when....he pursues his goal in a spontaneous choice of what is good and procures for himself through effective and skillful action, apt means to that end."

The world community of Churches in recognition and support of individual conscience, has broadened the 'right to life' proclaimed by the Universal Declaration of Human Rights by adding additional corollaries as 'rights not to take life'. In 1968, the Fourth Assembly of the World Council of Churches held at Uppsala, Sweden, issued a statement which includes the following:

"Protection of conscience demands the Churches should give spiritual care and support not only to those serving in the armed forces but also those who, especially in the light of the nature of modern warfare, object to participating in particular wars they feel bound in conscience to oppose...."

In October, 1970, representatives of the ten major living religions meeting at the World Conference on Religion and Peace in Kyoto, Japan issued a statement which includes the following:

"We consider that the exercise of conscientious judgement is inherent in the dignity of human beings and that, accordingly, each person should be assured of the right, on the grounds of conscience or profound conviction, to refuse military service, or any direct or indirect participation in wars or armed conflicts."

Again in September, 1974, the Second World Conference of Religion for Peace met in Louvain, Belgium and issued a Declaration which included the following:

"We therefore dedicate ourselves to work together for the total abolition of war.... We plead

with all people of faith and goodwill to recognize that there is no future for humanity if world-wide nuclear war is simply postponed or temporarily avoided. We urge that the religions of the world mount every possible pressure on the nuclear weapon governments to halt the proliferation of destructive nuclear armaments and to roll back existing weaponry until the stockpiles of nuclear devices have been safely dismantled and destroyed."

III. Religious Beliefs of Petitioner

o. By reason of religious training and belief, the Petitioner is conscientiously opposed to participation in war in any form, direct and indirect, and has demonstrated a consistency in such beliefs as supported by the following facts:

1) In 1967, the Selective Service System granted the Petitioner a 1-0 classification.

2) In May, 1970, Petitioner, in view of the immoral activity of the United States in Southeast Asia, returned his 1-0 classification as an act of conscience and faith and in demonstration of Petitioner's refusal to comply with or recognize the legitimacy of the Selective Service System in their immoral and unjust war effort and activity. A copy of this Declaration of Conscience is attached hereto and marked as Exhibit 3.

3) Since September, 1969, Petitioner's moral and religious beliefs have caused him to exercise a moral choice by refusing to pay the Federal Telephone excise tax and a percentage of his Federal income taxes which go to war and war-related activities. In each situation, Petitioner filed with the Internal Revenue Service, a series of letters of intent and statements explaining his moral choice and position. These statements, copies of which are attached hereto as shown in the following table, are herein incorporated by reference:

<u>Date</u>	<u>Exhibit</u>
April 13, 1970	4
April 13, 1971	5
August 30, 1971	6
March 6, 1972	7
April 15, 1972	8
June 30, 1972	9

<u>Date</u>	<u>Exhibit</u>
August 17, 1972	10
September 8, 1972	11
April 13, 1973	12
February 19, 1974	13
April 12, 1974	14

4) Since September 1969, the Petitioner has withheld approximately 61% of all his Federal income taxes which go to war and war-related activities and has contributed these withheld war taxes to the Human Services Alternative Fund Program, which was personally set up by the Petitioner. This fund is an ongoing program whose purpose is to develop and sustain various self-help life-producing programs in communities where the Petitioner may be working and secondly to support organizations dedicated to the spirit and practice of non-violence in their pursuit of truth, justice and peace for the community of man.

IV. Alternative Tax Fund

p. In conjunction with Petitioner's conscientious belief in the non-participation in war under any form, direct and indirect, he has withheld approximately 61% of all his Federal taxes which go to war and war-related activities and has contributed these withheld war taxes into an Alternative Fund, personally set up by the Petitioner under the title, Human Services Alternative Fund Program. For the tax year 1971, for which the Respondent has determined a deficiency, the Petitioner has contributed to the Human Services Alternative Fund Program as follows with copies of statements attached hereto and marked as Exhibit 15:

<u>Items:</u>	<u>Amount:</u>
Blankets for poverty-level families	--- \$110.55
Canned food goods for poverty-level families	--- \$ 96.35
	<u>\$206.90</u> (Total)

A total of \$551.60 dollars in withheld war taxes was withheld by the Petitioner in the tax year 1971. The remaining unspent balance of \$344.70 dollars remained in the Fund to be expended in the ensuing calendar years together with the additional withheld war taxes commencing with tax year 1972.

q. Petitioner's beliefs and actions, as set forth herein, are based upon the reasonable and conscientious belief that no tax deficiency is owing or could be owed to the Internal Revenue Service.

WHEREFORE, the Petitioner requests the Court to disallow the determinations and allegations of the Commissioner of Internal Revenue in view of the above facts, points of information and contentions.

Francis J. Costello
(Petitioner)

Francis J. Costello
53-54 96 Street
Elmhurst, New York 11368
(212) 699-7728

OF COUNSEL:

(Petitioner) Francis J. Costello
53-54 96 Street
Elmhurst, New York 11368
(212) 699-7728

Dated: January 2, 1975

Address any reply to: P.O. Box 2072, Andover, Mass. 01810

Department of the Treasury

Internal Revenue
Service Center

North-Atlantic Region

Date:

NOV 14 1972

In reply refer to:

RSC-531

STOP 102E



CERTIFIED MAIL

► Francis J. Costello
94-31 Fifty-First Avenue
Elmhurst, New York 11373

Tax Year Ended: December 31, 1971

Deficiency \$1,438.00

This letter is to notify you--as required by law--that we have determined the income tax deficiency shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiency was computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed Short-Form Statutory Notice Statement. This will permit an early assessment of the deficiency and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the statement, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiency. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiency and bill you until after the Tax Court has decided your case. The time in which you may file a petition with the Court (90 or 150 days, as the case may be) is fixed by law, and the Court cannot consider your case if your petition is filed late.

Under section 7463 of the Internal Revenue Code, the United States Tax Court has a simplified procedure for handling cases where the disputed portion of the deficiency does not exceed \$1,000. You may obtain information on this special procedure, as well as a copy of the rules for filing a petition with the Tax Court, by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

Sincerely yours,
Johnnie M. Walters
Commissioner
By

Exhibit 1

F. L. Blevins
Director

Enclosures:
Statement
Envelope

Exhibit 1 (cont.)

Report of Individual Income Tax Audit Changes



Department of the Treasury
Internal Revenue Service

Name and Address on Latest Return (or present name and address if different)

Social Security No. Year Form
1040 Examining District

Name and Title of Person With Whom Audit Changes Were Discussed

Date of Report

8/14/72

Filing Status

Single

In Reply Refer To:

AU:CA STOP 102B

Income and Deduction Amounts Adjusted

Explanation No. (See attached)	Item Changed	Amount shown on return or as previously adjusted	Corrected amount of Income and Deduction	IRS Ref. No.	Adjustment Increase or (Decrease)
250	Exemptions	6750. -	675. -		6075. -

A. Adjustment in income—Increase or (Decrease)—(See explanation of adjustments attached)	6075. -
B. Total income or taxable income shown on return or as previously adjusted	4299. -
C. Corrected total income or taxable income	10,374. -
D. Tax computed with exemptions	2191. -
E. Tax Surcharge	-
F. Tax Credits (Retirement income, investment, foreign, or other allowable credits) (If adjusted, see explanation attached)	-
G. Self-employment tax, tax from recomputing prior year investment credit (If adjusted, see explanation attached)	-
H. Corrected Tax (Line D plus line E plus line G less line F)	2191. -
I. Tax shown on return or as previously adjusted	753. -
J. Additional tax before credits, if any (Line H less line I)	1438. -
K. Overpayment before credits, if any (Line I less line H)	-
L. Net prepayment credit, excess FICA, Non-highway Gasoline Tax Credit, Regulated Investment Company Undistributed Capital Gain Credit, previous assessments, refunds, and credits (If adjusted, see schedule attached)	1545. -
M. Additional Tax (Line H less line L)	646. -
N. Overpayment (Line L less line H) <i>Interest</i>	13. -
O. Penalties, if any (See explanation attached) <i>TOTAL Balance Due</i>	659. -

Consent to Assessment and Collection—I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the Tax Court of the United States the findings in this report; therefore, I give my consent to either:

- (1) the immediate assessment and collection of the additional tax shown on line M, plus any interest due on this tax, and also any penalties shown on line O, or
(2) the overpayment shown on line N, plus any interest and adjusted by any penalties shown on line O.

NOTE: if a joint return
was filed, both taxpayers
should sign.

Signature of Taxpayer

Date

Signature of Taxpayer

Date

If you agree, please sign one copy and return it in the enclosed

Form 1902-E (Rev. 2-69)

UNITED STATES TAX COURT

Francis J. Costello

Petitioner

v.

Docket No.

Commissioner of Internal Revenue

Respondent

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (RSC-531 STOP 102B) dated November 14, 1972, and as the basis for his case alleges as follows:

1. The petitioner is an individual with residence at 94-31 51 Avenue, Elmhurst, New York 11373. The return for the period here involved was filed with the Director for the Internal Revenue Service Center district of North-Atlantic Region.
2. The notice of deficiency was mailed to the petitioner on November 14, 1972.
3. The deficiency as determined by the Commissioner is in income taxes for the calender year 1971 in the amount of \$1,438.00 dollars of which approximately \$659.00 dollars is in dispute.

Exhibit 20

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

a. The Commissioner erred in disallowing dependency deductions for the calendar year 1971.

b. The Commissioner erred in determining dependency deductions for calendar year 1971 as an expression of war or other protest.

c. The Commissioner erred in determining that dependency deductions for calendar year 1971 should be adjusted in accordance with Section 61 of the Internal Revenue Code.

5. The facts upon which the petitioner relies as the basis of this case are as follows:

a. Petitioner, by reason of religious training and belief, has acted conscientiously within the jurisdiction and protection of the Free Exercise Clause of the First Amendment.

b. Petitioner, under the forum of faith and conscience, has consistently now and in the past, maintained his responsibility to obey a moral power higher than the State with respect to his conscientious objection to participation, direct and indirect, in all war and war-related activities.

c. Petitioner has acted not only within the protection of the First Amendment with respect to religious freedom but also within the Constitutional interpretations, decisions and opinions of the Supreme Court concerning freedom of religion (e.g. U.S. v. Seeger, 1965); within the constitutional and statutory recognition by Congress as to religious belief; and within the right to conscience as defined by the Catholic Church (e.g. Pastoral Constitution on the Church in the Modern World, 1965).

Exhibit 2B (cont.)

Wherefore, the petitioner prays that this Court may try the case and find the petitioner not guilty of the deficiency as set forth by the Commissioner of Internal Revenue dated November 14, 1972.

Francis J. Costello
(Petitioner)

94-31 51 Ave Elmhurst, N.Y. 11373
(Post-office address)

STATE OF New York
COUNTY OF Queens SS:

Francis J. Costello, being duly sworn says that he is the petitioner above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and those he believes to be true.

Francis J. Costello
Subscribed and sworn to me before this 28th day of December, 1972.

Edward H. Hunsicker
(Official title)

Exhibit 2 (Cont.)

COPY

May 4, 1970

Selective Service System
Local Board No. 59A
65-08 Jamaica Ave.
Jamaica, N.Y. 11432

Dear Sir:

Because the unjust use of force and destruction by the United States in Vietnam and now throughout Indo-China is inhumane and immoral

Because the military presence of the United States in other continents, its capitalistic pressures and designs throughout the world and its oppressive measures and actions against minority peoples within the United States, are opposed to the democratic principles which this country should embody and uphold

Because I believe the present warfare policy pursued by the United States is of such a nature that it violates the inalienable rights of mankind to enjoy life, liberty and the pursuit of happiness and leads not only to violent domestic and global neglect but eventually will culminate in universal destruction

Because the faith in God, my Father, through my brotherhood with Christ, His Son, allows me no alternative but to actively work towards the reconciliation of mankind and not the destruction of creation

I hereby, refuse to comply any longer with the Selective Service System or recognize its legitimacy or to cooperate with the United States Government in its continued execution of the war in Vietnam and Indo-China.

I also pledge to do everything within my being to counsel others, who can conscientiously do so, to refuse conscription and/or service in the military service activities of the United States Government which is being carried out within the hypocritical posture of freedom, justice and peace.

Finally, I will encourage the development of other militant non-violent acts, be this through civil disobedience or not, which will demonstrate and hopefully change the present injustices and immoralities being committed by the United States Government directly in Indo-China and whose

Exhibit 3

COPY

Page 2.

indirect effects and attitudes are oppressing minority peoples within and without the United States.

Therefore, as a man of faith and conscience, I sign this declaration of conscience fully aware of what I do and the possible consequences of my act.

In the peace and brotherhood of Christ,

Francis James Costello

Exhibit 3 (cont.)

COPY

Form 843

Claim

Refund of taxes illegally, erroneously or excessively collected.

Francis J. Costello
93-10 50 Avenue
Elmhurst, N.Y. 11373
073-34-0584

IRS Center where return was sent:
North Atlantic Region
Andover, Mass. 01812

Name and Address shown on return:
Francis J. Costello
93-10 50 Avenue
Elmhurst, N.Y. 11373

Amount to be refunded:
\$85.80

Reasons for Claim:

As a conscientious objector, I cannot in anyway participate or cooperate with my government's involvement in Vietnam or other defense programming. To remain consistent with my conscientious beliefs, I hereby demand a refund of those taxes withheld from my earnings which go to the defense budget. Of the total Federal tax receipts for 1969 (\$147,875,000,000) a total of \$81,240,000,000 went to the defense budget (or 55% of the entire Federal budget). Therefore, the computations below are based upon these figures just mentioned.

1 Tax withheld (after computation of credits due).....	\$264.00
2 Estimated tax paid	00.00
3 Tax paid with original return.....	00.00
4 Any additional income tax paid.....	00.00
5 Total tax paid (add lines 1-4).....	264.00
6 Less: Your computation of correct tax.....	178.20
7 Amount of overpayment.....	85.80
8 Amount previously refunded.....	00.00
9 Net overpayment (enter in item 1 above).....	85.80

Francis James Costello

4/13/70

Exhibit 4

COPY

April 13, 1971

As reported in my tax statement of 1970, I owe the Federal Government a balance of \$31.94 dollars. However, on grounds of conscience, I must refuse payment of this balance for the following reasons:

- a. I am a Christian who abides by the principle of active pacifism and non-violence.
- b. The government has been using my tax dollar for the immoral purposes of waging war and genocide in Indo-China, committing war crimes and imposing an unjust military and imperialistic posture throughout the world.
- c. The government has shown no sincere effort to use my tax dollar for priorities in the area of human and cosmic development both abroad and most especially within our own country.

In addition to my refusal to pay the above balance of \$31.94 dollars, I demand a refund of \$820.66 dollars for taxes illegally collected by the government in 1970 for the immoral purposes of waging war, genocide, aggression abroad and repression at home. This figure is based upon the fact that presently the federal government expends approximately 48% of my tax dollar for the present war and military programming and \$1,795.24 dollars was withheld this year from my wages for tax purposes. Once refunded, I will use this money (as with the balance of \$31.94 dollars I refuse to pay) for worthwhile and humane domestic and international community development purposes since I cannot trust the government to do this.

This action is not an isolated act of protest but one

Exhibit 5

COPY

Page 2.

of many conscientious acts consistent with my Christian beliefs that I have performed in the past and will continue to do in the future. As a Christian who believes that the gospel of Christ and the non-violent cross must be incarnately lived, I will continue to overtly resist all government policy and activity which persists in the destruction of mankind through the perpetuation of war, poverty, racism and the violation of the inalienable rights of mankind.

Sincerely yours in Christ,

Francis J. Costello

Exhibit 5 (cont.)

COPY

August 30, 1971

Dear Sir,

Enclosed please find a new W-4 form in which I have claimed nine exemptions. This form was submitted to my employer on Aug. 30, 1971. The explanation for my action is for the following reason.

As a professional person in human service work, I try to consistently live the Christian life. Today, to live the gospel of Christ often involves placing oneself in jeopardy as a witness of non-violent love and peace and radical social change. Such witness often compels one to become a sign of contradiction to the prevalent lifestyle of society and the violent and oppressive actions committed by man through word and deed. Such words and deeds are blatantly exemplified by the immorality of the present war with its inhumane atrocities against Southeast Asian peoples. Since violence can only breed violence, this war in its horrendous complexity has resulted in an oppressive neglect of our poor people in this country and an unjust violation of the basic rights of mankind universally.

For these reasons, I am withholding 61% of my Federal taxes which is the amount of the Federal budget that goes towards the perpetuation of war and all related programs. In turn, I will not keep this withheld money, but will utilize it for purposes more humane and contributory towards human growth purposes. The tax money withheld will specifically go towards feeding poor people in the community where I work as well as to other growth-developing community programs.

In addition, I am returning copies of tax due statements from my phone tax and last fiscal year's federal taxes. With the federal tax overdue statement, I am enclosing a copy of a receipt from the Martin Luther King Memorial Center to whom I contributed my federal tax balance due (prior to the accrument of late payment penalties and interest).

Please be assured that I am fully aware of the consequences of my actions. However, I must live according to my conscience and Christian faith. Therefore, all cooperation with war-producing systems, specifically the draft and Internal Revenue Service, I cannot in conscience cooperate with. I remain,

Sincerely yours in Christ,

Francis J. Costello

Exhibit 6

COPY

March 6, 1972

Dear Sir,

Enclosed you will find a copy of a W-4 form that I have refiled with my employer on March 6, 1972 in which I have again claimed nine exemptions.

As a professional person involved in human service, I try to consistently live the Christian life. Today, to live the gospel of Christ often involves placing oneself in jeopardy in order to give witness to non-violent love and peace and to achieve radical social and political change. Such Christian witness often compels one to become a sign of contradiction to the prevalent life-style of society in its benign acceptance of the violence and oppression supported by governmental policy and program and carried out by man's words, attitudes, and actions. Such violence and oppression are already evidenced by the immorality of the present war with its inhumane atrocities against our Southeast Asian brothers. Since violence can only breed violence, this war in its perpetuation has resulted in international genocide and an oppressive abuse and neglect of our poor people in this country. This country's violent posture in its pursuit of war and war-related endeavors has resulted in an immoral and unjust violation of mankind's basic human rights.

For these reasons, I am withholding 61% of my Federal wage taxes which is the amount of the Federal budget for Fiscal year 1972 that will go towards war and war-related purposes. In turn, I will not keep this money myself but it will be utilized for life-producing purposes. All my withheld war taxes will be contributed to the Human Service Alternative Fund Program which I have set up in the community where I work. The purpose of this fund is to provide food and clothing and other basic necessities to our poor families and to develop other growth-producing community programs. Into this fund will also go my withheld phone war tax as well as other war taxes withheld by individuals across the country.

Please be assured that I am fully aware of the consequences of my actions. However, I am only living according to my conscience and carrying out the mandate of the Christian gospel and faith. I will resort to any non-violent radical action which will stop my government from violating human rights of all my brothers. I remain,

Sincerely yours in Christ,

Francis J. Costello

Exhibit 7

COPY

April 15, 1972

To whom it may concern,

Enclosed please find my Federal tax return requesting a refund of \$792.30. As related to you in two previous correspondences, dated Aug. 30, 1971 and again on March 6, 1972, I have on the basis of my Christian conscience, found it necessary to withhold Federal war taxes through W-4 exemptions.

As a professional person involved in human services, I try consistently to live the Gospel of Christ. To do this today, one often finds that to live in jeopardy is the only way to give witness to non-violent love and peace and to achieve radical social and political change. Such Christian witness often compels one to become a sign of contradiction to the prevailing social order which daily initiates, contributes and accepts the violence and oppression carried out by government policy and program.

Such violence and oppression are clearly evidenced by the immorality of the present war with its inhumane atrocities against all the people of Southeast Asia. Since violence can only breed violence, this war in its perpetuation has resulted in international genocide and an oppressive abuse and neglect of the poor in this country. This country's violent posture in its pursuit of war and war-related purposes has resulted in an immoral and unjust violation of mankind's basic human rights.

For these reasons, I withhold Federal war taxes and demand the refund to the amount found on my Federal tax return. All war taxes withheld and refunded will be utilized for life-producing purposes. The monies will be deposited into the Human Service Alternative Fund Program, which I have set up in the community where I work. The purpose of this fund is to provide food, clothing and other basic necessities to our poor families and to develop other self-help community programs. Into this fund will also be deposited other withheld war taxes, federal phone excise taxes etc. contributed by individuals across the country.

Please be assured that I am fully aware of the consequences of my actions. However, I am living according to my conscience and the mandate of the social gospel of Christ. In faith and conscience, I will continue to do all that is within my power in conjunction with others of good will and always within a non-violent radical posture, to stop the government from violating the human rights of

Exhibit 8

COPY

all my brothers and sisters.

Page 2.

Sincerely yours in the peace of Christ

Francis J. Costello

Exhibit 8 (cont.)

COPY

June 30, 1972

Dear Mr. Browitt,

In regard to your correspondence, I must inform you that on the basis of my Christian conscience, I cannot comply with what you ask of me. Now, as in the past (please refer to my correspondences of 8/30/71, 3/6/72, and 4/15/72) I find that I have no other alternative but to refuse payment of war taxes or any taxes that serve only to destroy the lives of my brothers and sisters throughout the world.

As a Christian, I try daily to live out the gospel of Christ in a consistent manner. Unfortunately when we try to do this, we are forced to live in constant risk and coerced to submit to laws and regulations such as the enclosed Notice 250, Section 61 of the Internal Revenue Code, which are unjust, immoral and insane. However, it is only in living according to my Christian conscience that I can give witness to a non-violent order and achieve the radical socio-political change necessary for this country's survival as a humane society. It is a Christian's joy to know that his life serves as a sign of contradiction to the prevailing order which daily pursues the violent destruction and oppression of human life. It is my Christian joy to reappropriate, in whatever way conscientiously possible, my right to be a genuine Christic person and to struggle for the human rights of all men --- my brothers and sisters.

For these reasons, I have withheld Federal war taxes and will continue to do so. I also demand that I receive the refund of \$792.30 which I requested and which was deducted from my wages during the 1971 tax year. Please be assured that all withheld war taxes are being utilized for life-producing purposes. The monies have been deposited into the Human Service Alternative Fund Program which I have set up in the community where I work. The purpose of this fund is to provide food, clothing and other basic needs of our poor families and to develop other self-help community programs such as voter registration drives. As of this date, a total of \$1191.35 has been spent for such provisions as mentioned above. Therefore, as you can see I will neither pay the tax money that you say I owe but I cannot as it has been spent appropriately to meet some of the needs of our poor people.

In respect for life, there will be life. Therefore, in faith and conscience I will continue to devote all my energy towards the achievement of life through resisting

Exhibit 89

COPY

Page 2.

all things within our present social order which violates the human rights of my brothers and sisters.

May the peace of Christ be yours

Francis J. Costello

Exhibit 9B (cont.)

COPY

Aug. 17, 1972

Dear Mr. Browitt,

Enclosed please find the form AU:CA STOP 102 B. On the basis of my Christian conscience, I must return this form unsigned. As noted in previous correspondences to the IRS (8/30/71, 3/6/72, 4/15/72 and 6/30/72) I have no other alternative as a Christian but to refuse to pay war taxes or any taxation that has as its only purpose, the destruction of my brothers and sisters throughout the world. I also respectfully decline to submit to the process of appeals that you have outlined for me. My reason for this is that I feel no culpability as to the withholding of war taxes. My only conscientious responsibility is to fulfill the highest law of Christ --- the law of love. This is the law that informs my conscience in word and deed. This is the only law that I can follow. Any mandated regulations of the state which contradicts the law of love is no law at all. And as a Christian I have no obligation to submit to these mandates. The forced payment of war taxes is such a mandate and the culpability here lies with those who enforce unjust and immoral taxation.

It is only through living the law of love and allowing it to inform my Christian conscience that I can give witness to a non-violent order and work for a radically transformed socio-political environment which insures equally the human rights of all. It is the joy of a Christian to know that his life serves. It is my Christian joy to reappropriate, in whatever way conscientiously possible, my right to be an authentic Christic person and the rights of all men --- my brothers and sisters --- to achieve the dignity of their own humanity.

For these reasons and as explained to you in previous correspondences, I have withheld Federal war taxes and will continue to do so. All withheld war tax monies have been utilized for life producing purposes and expended in the communities where I work for food, clothing and other basic unmet needs of our poor families as well as for the development of self-help community programs such as voter registration and community organization. As of this date, a total of \$1,191.35 has been expended for these purposes.

In the reverence for life, there will be life. Therefore, in faith and conscience, I will continue to devote all my energy towards this realization by resisting all things within our present social order which violates

Exhibit 10

COPY

Page 2.

the human rights of my brothers and sisters in this country
and throughout the world community.

Power to the peace and love of Christ

Francis J. Costello

Exhibit 10 (cont.)

COPY

Sept. 8, 1972

RE: AU:CB - STOP 102 B

Dear Sir,

Enclosed you will find my W-4 statement wherein I claim seven exemptions.

As a professional person involved in human service, I attempt to daily live out my Christianity as consistently as possible. For me to live out the gospel of Christ involves daily witness to non-violent love and risk and jeopardy to achieve radical social and political changes. To offer Christian witness compels me to provide a sign of contradiction to the prevailing social order in its blatant violence and benign acceptance of oppression supported by governmental policy, program and attitude. Such violence and oppression is clearly evidenced by the immorality of the Vietnam war with its inhumane atrocities against our Southeast Asian brothers.

Since violence can only breed violence, this war in its perpetuation has resulted in international genocide as well as national abuse and neglect of our own poor people. This country's violent posture in its pursuit of war and war related policies has resulted in an immoral and unjust violation of mankind's basic human rights.

For these reasons, I am withholding 61% of my Federal wage taxes which is the amount of the Federal budget for fiscal year 1972 - 1973 that will be expended for war and war-related purposes.

In turn, I will not keep this money myself but as in my previous employment, it will be utilized for life-producing purposes. All my withheld war taxes will be contributed to the Human Service Alternative Fund Program which I have set up. The fund's purpose will be to develop self-help and community programs within the school community where I work.

Please be assured that, as in the past, I am fully aware of the consequences of my actions. However, I am only living according to my conscience and fulfilling the mandate of the Christian faith and gospel. I will resort to any non-violent radical action which will stop my government from violating the human rights of my brothers and sisters.

Exh.b.7 110

COPY

Page 2.

I remain,

Sincerely yours in Christ,

Francis J. Costello

Exhibit 11 (cont.)

COPY

April 13, 1973

To whom it may concern,

Enclosed please find my balance due of \$62.65 based upon seven exemptions. As stated to you in previous correspondences, the most recent being 9/8/72, I have on the basis of my Christian conscience, found it necessary to withhold Federal war taxes through W-4 exemptions.

As a professional person involved in human service work, I daily attempt to live out my Christian faith and conscience as consistently as possible. For me, to live out the gospel of Christ involves giving witness to non-violent love in order to achieve radical social and political change in the prevailing social order with its blatant violence and benign acceptance of oppression as supported by governmental policy, program and attitude. Such violence and oppression is clearly evidenced by the posture of the U.S. government towards Southeast Asia with its inhumane war atrocities.

Since violence breeds violence, this war has resulted in international genocide as well as oppressive abuse and neglect of our poor people in this country. This country's violent posture in the pursuit of war and war-related policies has abrogated mankind's basic human rights.

For this reason I withhold 61% of my Federal taxs from my wages. In turn, this money is contributed to the Human Service Alternative Fund Program which I have set up. All monies withheld is utilized to develop and sustain various self-help and community programs in whatever community I find myself working at the moment.

This action I have taken is the only action open to me in order not to violate my Christian faith and conscience.

Thank you.

Sincerely yours in the peace of Christ

Francis J. Costello

Exhibit 12

UNITED STATES TAX COURT
WASHINGTON, D.C.

Date: Dec. 7, 1973

Docket No(s): 592-73

Francis J. Costello
94-71 - 51st Avenue
Elmhurst, New York 11373

FRANCIS J. COSTELLO

REQUEST FOR TRIAL STATUS REPORT

You are hereby notified that the above-entitled case(s) has (have) been reached for trial and will be calendared for the Session of the Court beginning June 10, 1974 at New York, New York unless there are compelling reasons for not doing so. The response date set forth below is to allow the parties time for negotiations which may result in the disposition of the case(s) without trial. Therefore your response should not be submitted prematurely. The same information has been requested from the respondent.

The status of the case(s) should be reported on the enclosed copy of this request and submitted not later than February 22, 1974.

1. Basis of settlement reached. _____
2. Probable settlement. _____
3. Probable trial.
Estimated trial time. _____ hrs.
4. Definite trial.
Estimated trial time. _____ hrs.
5. Case not ready for trial.
State reasons. _____

Cases reported as probable settlements will normally be listed on the trial calendar.

THIS IS NOT A NOTICE OF TRIAL. The Court will not prepare the calendar for the session indicated until expiration of the time allowed for your response to this request. A "Notice of Trial" will be sent to you approximately 90 days prior to the first day of that session.

Signed: _____
(COUNSEL FOR PETITIONER)

Date: _____

Clerk of the Court

Exhibit 13

COPY

February 19, 1974

Mr. Charles Casazza
Clerk of the Court
United States Tax Court
Washington, D.C. 20044

Dear Mr. Casazza:

I hereby acknowledge the notification that my case (Docket No. 592-73) has been reached for trial and awaits to be calendared beginning June 10, 1974 in New York City.

As for my response in this case, I can only reiterate that the respondent has erred in the determination of the tax deficiency and I, the petitioner, by reason of my faith and conscience, have acted conscientiously and consistently within:

- a) the jurisdiction and protection of the First Amendment's Free Exercise Clause.
- b) the Constitutional interpretations, decisions and opinions of the Supreme Court regarding freedom of religion.
- c) the Constitutional and statutory recognition by Congress as to religious belief and activity.
- d) the right to the free exercise of conscience as defined and supported by the Vatican II Council and the Catholic Church.

As requested, please accept this response as to the status of my case.

Thank you for your concern and cooperation in this matter. I remain,

Sincerely yours in the peace of Christ,

Francis J. Costello

Exhibit 13 (con't.)

COPY

April 12, 1974

Dear Sir:

Enclosed please find my Federal Income Tax Return for 1974 in which I am due a refund of \$23.52 based upon the seven exemptions I have claimed. As I have done for the past three years and have informed you in previous correspondences (the most recent one being 9/8/72 and 4/13/73), I have on the basis of my Christian faith and conscience found it necessary to withhold Federal taxes that go to war and war-related activities. I resist the payment of such war taxes through W-4 exemption inflation.

As a professional person involved in human service work, I daily struggle to live out my Christian faith and conscience as consistently as possible. For me, to live out the gospel of Christ involves giving witness to non-violent love in order to achieve radical social and political change within the prevailing social order. Such witness is a necessary alternative to the flagrant violence and benign acceptance of oppression as supported by the U.S. Government's defense policy, program and attitude. Such violence and oppression is still clearly evident in our "Peace Plan" policy in Southeast Asia, our fiscal and physical support of our vested interests in parts of Europe, Asia, Africa and South America and our continued development of electronic, computerized and depersonalized weaponry and chemical warfare.

Since violence can only breed violence, these policies, programs and attitudes have resulted in international genocide and the oppressive abuse and neglect of the many poor people in our own country. Scores of programs in health, education and welfare have already been cut back. All in all, this country's violent posture in pursuit of war and war-related activities has abrogated mankind's basic human rights.

For these reasons I withhold 59% of my Federal taxes from my wages. In turn, these withheld taxes which would normally go to war and war-related programs, are contributed to the Human Service Alternative Fund Program which I have set up. All withheld war taxes are utilized to develop and sustain various self-help and community programs in whatever community I may be working within at the moment.

This action I have taken is the only action open to me in order not to violate my Christian faith and conscience. I remain,

Sincerely yours in the peace of Christ

Francis J. Costello

Exhibit 14

PERSONAL MONEY ORDER

PERSONAL MONEY ORDER

NOT VALID OVER \$250.00

No. A 270003

December 1, 1971

50-1108
214

4

PAY TO THE
ORDER OF Institutional Services Inc.

 PENINSULA
NATIONAL BANK

 Invoice No. 1176 ARVERNE, N.Y.
 For- 19 Apollo #1526 Blankets Your Or.No. HB3692

 Frank J. Costello CSW
 SIGNATURE OF REMITTER
 Frank J. Costello
 Catholic of Arverne, N.Y.
 ADDRESS
 336 Beach 38 Street
 Edgemere, New York 11691

COPY NOT NEGOTIABLE

DATE	SHIPPED BY	OUR ORDER NO.	ALWAYS REFER TO INVOICE NO.	
11/18/71	United Linen	HB 3692	11763	
QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL	
19	Apollo #1526 Blankets, 66x90", Blue	5.35	101.65	
	Prepaid Freight Charge		8.90	
			110.55	

 rd. 12/1/71
 M.O. #A 27003

 INSTITUTIONAL SERVICES, INC.
 653 HICKS ST., BROOKLYN, N. Y. 11231

Date Paid 12/1/71

Check No. A 270003

THIS IS YOUR INVOICE

Exhibit 15

CUSTOMER COPY

PERSONAL MONEY ORDER

PERSONAL MONEY ORDER

NOT VALID OVER \$250.00

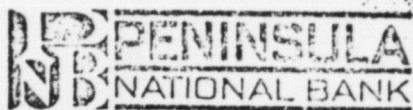
No. A 270002

December 1, 1971

50-1108
214

4

PAY TO THE ORDER OF The Flagstaff Foods Corp.



ARVERNE, N.Y.

For Emergency Food-Bill of 11/26/71-Inv. #32248

Frank J. [Signature]
Catholic Charities of Brook
330 Beach 30th Street
Edgemere, New York 11691

CUSTOMER COPY

THE FLAGSTAFF FOODS CORP.

CUSTOMER COPY

PERTH AMBOY, NEW JERSEY

DATE

TELEPHONE
HILLCREST 2-7000

CATHOLIC CHARITIES 41585
FAMILY SERV DIV 03
OF QUEENS
316 BEACH 37TH ST 41585
EDGEMERE LI NY

11/26/71

32248

MO.	DAY	YR.	DESCRIPTION	CHARGES	CREDITS
11	12	71		3270	
11	12	71		2540	
11	19	71		3825	
			9635	9635 *	

STATEMENT

Peninsula No. On-A A 270002
Pd. 12/1/71

1000

Exhibit 15 (cont.)

September 10, 1975

A. Daniel Fusaro, Esquire
Clerk, U.S. Court of Appeals
for the Second Circuit
Room 1702, U.S. Courthouse
Foley Square
New York, New York 10007

Re: Costello v. Commissioner
(C.A. 2 - No. 75-4149)

Dear Mr. Fusaro:

Enclosed please find twenty-five copies of Petitioner-Appellant's brief in the above-entitled case. On 9/8/75, ten copies of Petitioner-Appellant's Record Appendix was received by your office through certified mail (No. 557759).

In accordance with Rule 31(b), three additional copies of the enclosed material was also forwarded to opposing counsel through certified mail (Receipt No. 558200). This material was received by opposing counsel on 8/29/75. In addition, one copy of the Petitioner-Appellant's Record Appendix in the above-entitled case was also forwarded to opposing counsel through certified mail (Receipt No. 557760).

I trust that this will be sufficient for your purposes. I remain,

Sincerely yours,

Francis J. Costello

Francis J. Costello
53-54 96 Street
Elmhurst, New York 11368

STATE OF New York

COUNTY OF Queens

ss:

Francis J. Costello, being duly sworn
says that he is the Petitioner-Appellant above named and
that the statements contained herein are true.

Francis J. Costello

Subscribed and sworn to me before this 10th day of
September, 1975.

Edward N. Shanahan
(Official Title)

EDWARD N. SHANAHAN
NOTARY PUBLIC, State of New York
No. 41-8933601
Qualified in Queens County
Term Expires March 30, 1976

September 5, 1975

A. Daniel Fusaro, Esquire
Clerk, U.S. Court of Appeals
for the Second Circuit
Room 1702
U.S. Courthouse
Foley Square
New York, New York 10007

Re: Francis J. Costello v. Commissioner
(C.A. 2 - No. 75-4149)

Dear Mr. Fusaro:

Enclosed please find ten copies of the Record Appendix I have prepared as the appellant in the above-entitled case according to Rule 30(a). The contents of the Appendix have been agreed upon by both parties concerned.

One copy of the enclosed Record Appendix has been forwarded separately to opposing Counsel as also required under Rule 30(a).

I trust that the enclosed is sufficient for your office. Therefore I remain,

Sincerely yours,

Francis J. Costello

Francis J. Costello
53-54 96 Street
Elmhurst, New York 11368



UNITED STATES COURT OF APPEALS

Index to Record on Appeal

1. Statement of Issues.
2. Original Petition of Petitioner-Appellant.
3. Statutory Notice of Deficiency.
4. Respondent's Answer.
5. Stipulation of Facts.
6. Attached Exhibit of Petitioner's Wage Statement, Income Tax Return (1971) and letter of explanation as part of the Stipulation of Facts.
7. Petitioner's Trial Memorandum.
8. Attached Exhibit 15 of Petitioner's Original Trial Brief as part of Petitioner's Trial Memorandum.
9. Decision and Memorandum Findings of Fact and Opinion filed by Judge Tannenwald.
10. Petitioner-Appellant's Notice of Appeal.